

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY,

Plaintiff,

v.

MERRILL LYNCH, PIERCE, FENNER
& SMITH INC.; DEUTSCHE BANK
SECURITIES INC.; GOLDMAN,
SACHS & CO., INC.; J.P. MORGAN
SECURITIES LLC; and RBS
SECURITIES INC.,

Defendants.

Civil Action No. 3:11-cv-30285-MAP

Oral Argument Requested

**DEFENDANTS' CROSS-MOTION TO
COMPEL DISCOVERY RESPONSES**

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Rule 37.1 of the Local Rules of the United States District Court for the District of Massachusetts, Defendants Merrill Lynch, Pierce, Fenner & Smith, Inc., Deutsche Bank Securities Inc., Goldman, Sachs & Co., J.P. Morgan Securities LLC, and RBS Securities Inc. (collectively, "Defendants") hereby move for an order to compel Plaintiff Massachusetts Mutual Life Insurance Company ("MassMutual") to provide responses to certain discovery requests contained in Defendants' First Set of Requests for the Production of Documents ("Defendants' Requests").

As set forth more fully in the accompanying Memorandum of Law, Defendants move to compel documents related to MassMutual's automated valuation model ("AVM") and "forensic review" in response to Defendants' Request Nos. 52-54 and 72. During the parties' discovery conference, MassMutual represented that it would not produce the aforementioned documents on the grounds that they were protected under the attorney-client privilege and work

product immunity. Defendants submit that even if such protections ever applied, they were waived when MassMutual placed its “forensic review” and AVM directly at issue in its Complaint and, further, Defendants’ substantial need for those documents warrants disclosure.

For the reasons set forth above and in the accompanying Memorandum of Law (as well as the affidavit of Kamil E. Redmond submitted in support), Defendants respectfully request that this Court order MassMutual to produce documents in response to Request Nos. 52-54 and 72, together with such additional or alternative relief as the Court deems appropriate.

REQUEST FOR ORAL ARGUMENT

Defendants respectfully request that the Court schedule a hearing on this Cross-Motion to Compel Discovery Responses.

Dated: October 16, 2012
Boston, Massachusetts

Respectfully submitted,

By: /s/ Zachary C. Kleinsasser

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 37.1

I, Zachary C. Kleinsasser, hereby certify that Defendants have made a good faith effort to meet and confer with the Plaintiff to try and narrow the issues addressed in this cross-motion, as set forth in the Memorandum in Support of Defendants' Cross-Motion to Compel Discovery Responses, page 4, filed simultaneously herewith.

Dated: October 16, 2012

/s/ Zachary C. Kleinsasser
Zachary C. Kleinsasser

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NE) and paper copies will be sent to those indicated as nonregistered participants on October 16, 2012.

Dated: October 16, 2012

/s/ Zachary C. Kleinsasser
Zachary C. Kleinsasser